

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JUNE 12, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1988**

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**Introduced by Assembly Member Swanson**

February 14, 2008

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An act to amend Sections 6325, 6600, ~~6602, and 6603~~ *6601, 6602, 6603, and 6604* of, and to add ~~Section 6595~~ *Sections 6595 and 6600.8* to, the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Swanson. Employee safety.

Existing federal law, the Occupational Safety and Health Act of 1970, establishes requirements for the furtherance of occupational safety and health and authorizes states with individually approved plans on the subject to operate their own occupation health and safety programs. Existing state law, the California Occupational Safety and Health Act of 1973, was enacted to ensure safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational health and safety. The Division of Occupational Safety and Health of the state Department of Industrial Relations is charged with enforcing occupational health and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

Existing law requires the division, when it decides that a place of employment, machine, device, apparatus, or equipment constitutes an imminent hazard to employees, to prohibit entry to the workplace or use of the machine, device, apparatus, or equipment.

This bill would clarify that a place of employment may be deemed *by the division to be* dangerous because of a particular machine, device, apparatus, or equipment, as well as a condition or practice in a place of employment, constituting an imminent hazard to employees.

Existing law establishes the Occupational Safety and Health Appeals Board within the department and requires the board to conduct hearings about specified orders and actions of the division related to violations of occupational health and safety laws. An employer is required to notify the board of its intent, if any, to appeal a citation, order, or notice issued by the division within 15 working days of receipt of the citation, order, or notice. However, existing law provides that an employee or representative of an employee alleging to the board that the time period fixed for the abatement of a violation is unreasonable is required to file that notice with the division or appeals board within 15 working days of the issuance of the citation or order.

This bill would *change the time for appeal of a citation, notice, or order issued by the division to 30 calendar days*. The bill would state the purpose of the appellate process and would require the appeals board to resolve appeals in a manner designed to maximize the furtherance of safe and healthy working conditions, or public safety consistent with public safety mandates enforceable by the division, ~~consistent with due process and with specified principles of reasonableness~~. The bill also would provide that an abatement measure required by the division ~~through an instrument that an employer intends to contest~~ *appeals* is not stayed pending appeal ~~unless, except as specified procedures are followed and the board decides to grant the stay~~. The authority of an employee or representative of an employee to file an allegation of unreasonableness of time for abatement would be limited to filing with the appeals board, rather than the division or the appeals board.

*The bill would authorize the division to amend a citation, notice, or order to correct mistakes prior to the hearing on the appeal and to move to amend the citation, notice, or order to conform to proof, at any time before the matter is submitted to the board unless the mistake has caused the adverse party to maintain his or her action or defense to that party's prejudice.*

Existing law requires the board to adopt practices and procedures that conform with specified provisions related to the conduct of hearings.

This bill would require that the practices and procedures also provide for the scheduling of hearings in a manner designed to minimize inconvenience to the division and all parties and witnesses who are required to attend hearings and establish a settlement program designed to bring the parties to agreement at the earliest possible stage of the appeal. *The bill would require the division to provide a copy of the file pertaining to an enforcement order to an employer against whom it is issued within 48 hours, upon request.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6325 of the Labor Code is amended to  
2     read:  
3     6325. When, in the opinion of the division, a place of  
4     employment is dangerous to employees because of a condition or  
5     practice, or because a machine, device, apparatus, or equipment  
6     or any part thereof is in a dangerous condition, is not properly  
7     guarded, or is dangerously placed so that the condition or practice  
8     of the workplace or the machine, device, apparatus, or equipment  
9     constitutes an imminent hazard to employees, entry therein, or the  
10    use thereof, as the case may be, shall be prohibited by the division,  
11    and a conspicuous notice to that effect shall be attached thereto.  
12    The prohibition of use shall be limited to the immediate area in  
13    which the imminent hazard exists, and the division shall not  
14    prohibit any entry in or use of a place of employment, machine,  
15    device, apparatus, or equipment, or any part thereof, which is  
16    outside the area of imminent hazard. The notice shall not be  
17    removed except by an authorized representative of the division,  
18    nor until the place of employment, machine, device, apparatus, or  
19    equipment is made safe and the required safeguards or safety  
20    appliances or devices are provided. This section shall not prevent  
21    the entry or use with the division's knowledge and permission for  
22    the sole purpose of eliminating the dangerous conditions.  
23    SEC. 2. Section 6595 is added to the Labor Code, immediately  
24    after the heading for Chapter 7 of Part 1 of Division 5, to read:

1     6595. The purpose of the appellate process prescribed by this  
2 chapter is to adjudicate, in an expeditious manner, whether the  
3 division has acted unreasonably regarding any actions taken by it  
4 resulting in an appeal pursuant to this chapter, including the actions  
5 taken by the division that are subject to appeal pursuant to Section  
6 6600. The appeals board shall resolve appeals in a manner designed  
7 to maximize the furtherance of safe and healthy working conditions  
8 for the working men and women of California, or the furtherance  
9 of public safety consistent with public safety mandates enforceable  
10 by the division, consistent with due process and with the principles  
11 of reasonableness described in Sections 6400, 6401, 6403, and  
12 6406. *chapter is to provide an impartial forum for the just and  
13 prompt adjudication of workplace safety and health disputes  
14 involving the division, employers and employees, and their  
15 representatives.*

16     SEC. 3. Section 6600 of the Labor Code is amended to read:

17     6600. An employer served with a citation or notice pursuant  
18 to Section 6317, or a notice of proposed penalty under this part,  
19 or any other person obligated to the employer as specified in  
20 subdivision (b) of Section 6319, may appeal to the appeals board  
21 within ~~15 working~~ *30 calendar* days from the receipt of the citation  
22 or notice with respect to violations alleged by the division,  
23 abatement periods, amount of proposed penalties, and the  
24 reasonableness of the changes required by the division to abate  
25 the condition.

26     SEC. 4. Section 6600.8 is added to the Labor Code, to read:

27     6600.8. (a) *The appeals board shall, in furtherance of justice,  
28 and on any terms as may be proper, allow the division to amend  
29 any citation or order by adding or striking out the name of any  
30 party, or by correcting a mistake in the name of a party, or a  
31 mistake in any other respect; and may, upon like terms, continue  
32 the hearing of the appeal.*

33     (b) (1) *The appeals board shall allow the division to amend a  
34 citation or order, pursuant to subdivision (a), at any time before  
35 the commencement of the hearing of the appeal, whether before  
36 or after the passage of six months from the issuance of the citation.*

37     (2) *The appeals board shall allow the division to move, orally  
38 or in writing, to amend, pursuant to subdivision (a), any allegation  
39 in a citation or order to correct a mistake identified at the hearing*

1 *or to conform to the proof presented at the hearing of the appeal,*  
2 *at any time before the matter is finally submitted to the board.*

3 *(3) An amendment as described in subparagraphs (1) and (2)*  
4 *shall not be allowed if the mistake to be corrected has caused the*  
5 *adverse party, in reliance thereon, to maintain his or her action*  
6 *or defense upon the merits in a manner prejudicial to that party.*  
7 *However, if the claimed prejudice can be remedied by a*  
8 *continuance of the hearing, a continuance shall be granted in lieu*  
9 *of dismissal of the citation.*

10 *SEC. 5. Section 6601 of the Labor Code is amended to read:*

11 *6601. If within ~~15 working~~ 30 calendar days from receipt of*  
12 *the citation or notice of civil penalty issued by the division, the*  
13 *employer fails to notify the appeals board that he or she intends*  
14 *to contest the citation or notice of proposed penalty, and no notice*  
15 *contesting the abatement period is filed by any employee or*  
16 *representative of the employee within ~~such~~ that time, the citation*  
17 *or notice of proposed penalty shall be deemed a final order of the*  
18 *appeals board and not subject to review by any court or agency.*  
19 *The ~~15-day~~ 30-day period may be extended by the appeals board*  
20 *for good cause.*

21 ~~SEC. 4.~~

22 *SEC. 6. Section 6602 of the Labor Code is amended to read:*

23 *6602. (a) If an employer notifies the appeals board that he or*  
24 *she intends to contest a citation issued under Section 6317, or*  
25 *notice of proposed penalty issued under Section 6319, or order*  
26 *issued under Section 6308, or if, within ~~15 working~~ 30 calendar*  
27 *days of the issuance of a citation or order any employee or*  
28 *representative of an employee files a notice with the appeals board*  
29 *alleging that the period of time fixed in the citation or order for*  
30 *the abatement of the violation is unreasonable, the appeals board*  
31 *shall afford an opportunity for a hearing. The appeals board shall*  
32 *thereafter issue a decision, based on findings of fact, affirming,*  
33 *modifying, or vacating the division's citation, order, or proposed*  
34 *penalty, or directing other appropriate relief.*

35 ~~(b) (1) An abatement measure required by the division through~~  
36 ~~an appealable enforcement action described in subdivision (a) shall~~  
37 ~~not be stayed pending appeal unless the employer indicates, by~~  
38 ~~verified petition in its notice of appeal to the appeals board, that~~  
39 ~~it seeks a stay of abatement and the reasons why abatement is not~~  
40 ~~necessary to protect the health or safety of employees.~~

1     ~~(2) After the board receives a notice pursuant to paragraph (1),~~  
2     ~~it shall do both of the following:~~

3     ~~(A) Schedule a hearing within 30 days of receipt of the notice~~  
4     ~~to determine whether abatement shall be stayed pending full~~  
5     ~~resolution of the appeal.~~

6     ~~(B) Issue a written order within 10 days of completion of the~~  
7     ~~hearing granting or denying the requested stay of abatement with~~  
8     ~~an explanation of the reasons for its decision.~~

9     ~~(3) The board may grant a stay of abatement pending appeal if~~  
10    ~~it finds either of the following:~~

11    ~~(A) No employee will be exposed to the unsafe or unhealthy~~  
12    ~~condition.~~

13    ~~(B) The condition is unlikely to cause death, serious injury or~~  
14    ~~illness, or serious exposure to an employee.~~

15    ~~(4) Notwithstanding subparagraph (B) of paragraph (2), the~~  
16    ~~board may take an additional 30 days to complete the hearing~~  
17    ~~process if it determines that the complexity of the matter requires~~  
18    ~~the additional 30 days for an adequate resolution and that employee~~  
19    ~~safety will not be jeopardized by the delay in issuing the written~~  
20    ~~order, and issues an interim order to that effect.~~

21    ~~(5) The board may order the employer to implement interim~~  
22    ~~safety or health measures as part of a determination that the matter~~  
23    ~~will be extended for the additional 30 days pursuant to paragraph~~  
24    ~~(4) or that a stay of abatement shall be granted.~~

25    ~~(b) The division shall include in its policies and procedures,~~  
26    ~~and enforce through disciplinary or other appropriate measures,~~  
27    ~~a provision requiring managers and staff to promptly respond to~~  
28    ~~an employer's request for a complete copy of the file pertaining~~  
29    ~~to an enforcement action issued to the employer, excluding any~~  
30    ~~documents that the division reasonably believes are legally~~  
31    ~~privileged. The provision shall provide that, absent extenuating~~  
32    ~~circumstances, a copy of the file shall be made available to or~~  
33    ~~mailed to the employer within 48 hours of receipt of the request.~~

34    ~~(c) An abatement measure required by the division through an~~  
35    ~~appealable enforcement action described in subdivision (a) shall~~  
36    ~~not be stayed pending appeal, except as described in subdivision~~  
37    ~~(d).~~

38    ~~(d) Within 15 calendar days following the issuance by the~~  
39    ~~appeals board of an appeal docket, the division may designate a~~  
40    ~~case for expedited hearing by the appeals board. If an expedited~~

1 *hearing is ordered, the employer shall not be required to comply*  
2 *with an abatement measure until the appeals board holds a hearing*  
3 *and issues a decision.*

4 *(e) An expedited hearing described in subdivision (d) shall be*  
5 *scheduled and completed no sooner than 60 days after the division*  
6 *designates the appeal as expedited, or later than 90 days after*  
7 *such designation. This period may be extended by the appeals*  
8 *board upon the request of one party based on evidence of good*  
9 *cause or upon agreement of the parties.*

10 *(f) The appeals board shall issue a decision within 30 days after*  
11 *the hearing.*

12 ~~SEC. 5.~~

13 *SEC. 7. Section 6603 of the Labor Code is amended to read:*

14 6603. (a) The rules of practice and procedure adopted by the  
15 appeals board shall do all of the following:

16 (1) Be consistent with Article 8 (commencing with Section  
17 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and  
18 Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and  
19 11516 of, the Government Code.

20 (2) Provide affected employees or representatives of affected  
21 employees an opportunity to participate as parties to a hearing held  
22 pursuant to Section 6602.

23 (3) Provide for the scheduling of hearings in a manner designed  
24 to minimize inconvenience to the division and all parties and  
25 witnesses who are required to attend the hearings.

26 (4) Establish a settlement program designed to bring the parties  
27 to an agreement at the earliest possible stage of the appeal.

28 (b) The superior courts shall have jurisdiction over contempt  
29 proceedings, as provided in Article 12 (commencing with Section  
30 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the  
31 Government Code.

32 *SEC. 8. Section 6604 of the Labor Code is amended to read:*

33 6604. (a) The appeals board may, in accordance with rules of  
34 practice and procedure which it shall adopt, direct and order a  
35 hearing officer:

36 ~~(a)~~

37 *(1) To try the issues in any proceeding before it, whether of fact*  
38 *or of law, and make and file a finding, order, or decision based*  
39 *thereon.*

40 ~~(b)~~

(2) To hold hearings and ascertain facts necessary to enable the appeals board to determine any proceeding or to make any order or decision that the appeals board is authorized to make, or necessary for the information of the appeals board.

*(b) In the conduct of hearings before the appeals board or an administrative law judge, inquiry may be made in the manner, through oral testimony and records, that is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this part. The duty of the appeals board or an administrative law judge in the hearing is to inquire fully into the facts as to whether the employer committed the violation or violations alleged in the citation.*

CORRECTIONS:

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